

Clearinghouse Rule 06-132

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING AND RECREATING AND CREATING RULES

The Natural Resources Board proposes an order to repeal and recreate s. NR 5.18; and to create s. NR 5.001(12m) Wis. Adm. Code relating to the mandatory boating education program, temporary certifications and course fees.

LE-06-07

Analysis Prepared by Department of Natural Resources

1. Statutes Interpreted.

Sections 30.625(1)(a), 30.678(1)(d), and 30.74(1)(a) and (b), Stats.

2. Statutory Authority.

Section 30.74(1)(a), (am), and (b), Stats.

3. Explanation of agency authority to promulgate the proposed rule under the statutory authority.

The new mandatory boating safety education program is established under s. 30.678 (1)(d), Stats. Section 30.74(1)(a), Stats., requires the department to create comprehensive courses on boating safety and operation. These courses shall be offered in cooperation with schools, private clubs and organizations, and may be offered by the department in areas where requested and where other sponsorship is unavailable. The department is required to prescribe the course content and the form of the certificate. Section 30.74(1)(am), Stats., authorizes the department to promulgate rules to establish minimum standards and procedures for the instruction required to be given pursuant to s. 30.625(1)(a), Stats. Section 30.625(1)(a), requires any person engaged in the rental or leasing of a motorboat to provide instruction to the customer on how to operate in the manner established by the department. Section 227.11(2)(a), Stats., also grants the department rule making authority to better effectuate the statute. All rules promulgated under this authority are subject to review under ch. 227, Stats.

4. Related statute or rule

None

5. Plain language analysis of the proposed rule

This rule establishes the minimum standards and procedures for the instruction to be given under and comply with ss. 30.625 (1) (a) and 30.74 (1) (am), Stats. The process developed under this rule will allow boat rental businesses to provide the minimum basic training required to for a person who will be renting or leasing and operating a motorboat which they have rented or leased. This rule clarifies the minimum age to be eligible for a temporary boater education training and certificate will be 16 years of age and that the certification only applies to the operation of boats that are rented or leased by the holder of the certificate. In addition, this rule establishes the process for administering an exam and issuance of a temporary

certificate. Motorboat rental businesses will be required to collect a \$10 fee for the temporary boating education course of instruction and issuance of the certificate. Similar to fees collected for regular boating education certification courses, the person or business providing the training and administering the exam will be allowed to retain up to 50 % of the fee to defray expenses incurred locally to provide the training and issue the temporary certificate. All remaining funds shall be turned in to the department to defray expenses incurred to operate the boating safety program.

6. Summary of and preliminary comparison with existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.

There are no similar federal regulations.

7. Comparison of similar rules in adjacent states (Minnesota, Iowa, Illinois and Michigan)

None of the states of Minnesota, Iowa, Illinois or Michigan have a temporary certificate program. They also do not regulate the fees that are charged for an internet class. Those fees are administered by the internet provider.

8. Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule.

Recently 2005 ACT 356 was passed into law requiring all persons born on or after 1-1-1989 and who is 16 years of age or older, to have a boating safety certification if they wish to operate a motorboat in the state. Wisconsin is a very popular boating state and has many businesses who rent boats to people both residents and non-residents. By providing a temporary boating safety certificate through the rental businesses, the department is able to better facilitate the business and the person who wishes to operate a rental motor boat in this state.

Internet based courses provide a very viable option for people who wish to become certified in boating safety education in the convenience of their own homes if they wish. Current rules are unclear regarding fees to be charged and remitted when the department issues a DNR boating education certificate for a course taken over the internet, when such course has been recognized by the department as meeting the minimum requirements to become certified to operate a boat in Wisconsin under a memorandum of Understanding between the internet course provider and the department. This rule will clarify that the fee structure for internet based courses will be the same as the structure used for courses provided by the United States power squadron, United States coast guard auxiliary and other entities which are covered by a memorandum of understanding with the department. This clarification will allow for better quality courses and providing more availability of courses to the public.

9. Analysis and supporting documentation that the agency used in support of the agency's determination of the rules effect on small businesses under s. 227.114, stats or that was used when the agency prepared an economic impact report.

The modification of the current rule and the establishment of the temporary boater education certificate will only affect those small businesses that rent or lease motorboats and who wish to participate in this program. The affect is hoped to be minimal based on the simplified process which was developed by the department to keep track of the number of temporary boating safety education certificates that were issued and the funds which were collected by the boat rental agents providing the education and certification. The department used the small business and final regulatory flexibility analysis procedure to formulate this summary.

10. Effects on small business, including how the rule will be enforced.

These rules will allow small businesses that rent motor boats the opportunity to continue to conduct their business of renting motor boats to customers who may not already hold a department issued boater safety education certification or one recognized from another state. The rental business will be provided the opportunity to provide training to the renter and issue them a temporary safety education certificate.

The rule establishment and modification will allow businesses who rent motorboats to administer a boater education test and record the information for the temporary certificate. This rule will allow small businesses the ability to rent motorboats to individuals that might otherwise not be able to legally operate a motorboat. This will require the business to provide a minimum level of training on the safe operation of a boat and the boating laws of Wisconsin and issue a temporary boating education certificate to individuals who were born on or after 1-1-89 and are at least 16 years of age, but who are not already certified to operate a motorboat in Wisconsin. A small business will not be required to provide this training and certification to customers. It will be up to the small business to determine if they want to take advantage of these rules. This rule does provide that a small business that provides boating education training and issues temporary certificates under the authority of this rule to keep up to \$5 per individual that they train and certify to help defray the cost of doing so.

A small business that chooses to participate in the temporary boater education certification program who does not submit reports or persons they train and certify or the required fees to the department may be subject to a forfeiture of not more than \$100 and may be subject to s. 23.79(3), Stats., for any fees not submitted to the department.

11. Agency contact person (including e-mail and telephone number).

Roy S. Zellmer, 101 S. Webster Street P.O. Box 7921, Madison, WI 53707-7921, (608) 264-8970, roy.zellmer@wi.gov

12. Place where comments are to be submitted and deadline for submission.

Roy S. Zellmer, 101 S. Webster Street P.O. Box 7921, Madison, WI 53707-7921, (608) 264-8970, roy.zellmer@wi.gov The deadline for written comments is February 1, 2007. Comments may also be electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>.

SECTION 1. NR 5.001(12m) is created to read:

NR 5.001(12m) "Rental agent" means a person who is in the business of renting or leasing motorboats to the public.

SECTION 2. NR 5.18 is repealed and recreated to read:

NR 5.18 Boating education certification program.

(1) TEMPORARY BOATING EDUCATION CERTIFICATES. (a) *Eligibility*. Only individuals that meet all of the following are eligible to receive a temporary boating education certificate:

1. A person who is or will be renting or leasing a motor boat from a rental agent who has agreed to provide them with boating education training as required under par. (c).
2. A person who is 16 years of age or older.

(b) *Effective period.* All of the following conditions apply to a temporary boating education certificate issued under this section:

1. Shall be valid from the time and date of issuance, until the end of the calendar year issued.
2. Shall only be valid for the person it is issued to for the purpose of complying with s. 30.678(1)(d), Stats.
3. Shall only be valid for the operation of a motor boat which is rented or leased by the holder of the certificate.

Note: Temporary boating education certificates may not be issued to persons who are not renting or leasing the motor boat. Persons age 10-15 are not eligible for a temporary boating education certificate. Pursuant to s. 30.678(1), Stats., a person age 10-15 may operate a motor boat that is not a personal watercraft (PWC) if they are accompanied by a parent or guardian or by a person who is at least 18 years of age and who is designated by a parent or guardian. Persons age 12-15 may operate a motor boat, including a PWC, without an adult, parent or guardian present, if they hold a valid boating education certificate issued by the department under s. 30.74(1)(a), Stats.

(c) *Education and training requirements.* The department shall create a short course of instruction which covers the Wisconsin general boating laws and the safe operation of a motor boat. These courses may be offered through a rental agent that rents or leases motor boats to the public, or by the department.

1. A rental agent that rents or leases motor boats and offers a course of instruction under this paragraph shall issue a temporary boating education certificate to persons 16 years of age or older successfully completing the course.
2. The department shall prescribe the course content in a student manual to be provided to any rental agent that rents or leases motor boats to the public.
3. The department shall prescribe the form of the temporary certificate that shall be provided to any person that successfully completes that training and passes an exam provided by the department with the manual.

(2) **COURSE AND CERTIFICATE ISSUANCE FEES.** (a) *Department sponsored courses.* The fee for the boating education certification course taught by the department or an instructor certified by the department to teach the department's boating education program authorized under s. 30.74(1)(a), Stats., shall be \$10.00. The department may authorize the instructors to retain up to 50% of the fee to defray expenses incurred locally to operate the program based on the actual cost incurred to the instructor. The remaining funds shall be turned in to the department to defray expenses incurred to operate the boating safety program during the year.

(b) *Department approved courses.* The portion of the fees collected for certification and turned into the department for courses taught by the United States Power Squadron, United States Coast Guard Auxiliary and other entities which are covered by a memorandum of understanding with the department regarding boating education courses shall be \$1.00. This paragraph does not prevent those entities covered by a memorandum of understanding with the department from charging a fee that is reasonable to defray their costs of administering and operating the courses they provide. The department may authorize specialized fees for internet based education certification programs pursuant to a memorandum of understanding with the managing entity. The fee shall be sufficient to defray authorized operational costs of the managing entity and the department.

(c) *Rental agent short courses.* The fees for a temporary boating education certificate issued under sub. (1) shall be \$10.00. A rental agent that offers training and certification pursuant to sub. (1)(c), shall collect the fee and may retain up to 50% of the fee to defray expenses incurred by them to conduct the training and exam and issue the certificate. The remaining funds shall be turned in to the department monthly along with any required reports. All rental agents shall submit a report to the department by the

10th day of each month containing the following information regarding each person who completes the training and exam described in sub. (1)(c). during the previous month:

1. Name, address, and date of birth.
2. The exam score.
3. The date each person's temporary boating education certificate was issued.
4. The temporary boating education certificate number, if applicable.
5. Total course fees collected.
6. Total fees being remitted to the department.

SECTION 3. Effective date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 4. Board adoption. The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)